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Subject: Manville's suit

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 T - Telegram
 V - Telephone
 X - Miscellaneous
 Y - Study

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15606304

July 20, 1983


The Honorable Fred F. Fielding
Counsel to the President
The White House
Washington, D.C. 20500

Dear Fred:

It was good to see you at Senator Laxalt's office last evening. As I told you at that time, I wanted to send over the papers on Manville's suit which will be filed today. I have also sent copies to Mike Uhlmann who, I understand, handles these matters for the Legal Affairs Cabinet Council.

If I can be of assistance in this or any other matter, please do not hesitate to call me.

Sincerely,


William T. Kendall

Enclosures

EMBARGOED FOR RELEASE ON
JULY 21, 1983

CONTACT: John Lonnquist
Director of Public Affairs
Manville Corporation
1025 Connecticut Ave., N.W.
Suite 214
Washington, D.C. 20036
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DECLASSIFIED WORLD WAR II DOCUMENTS REVEAL
NAVY KNEW AND ALLOWED DANGEROUS ASBESTOS EXPOSURES DURING WORLD WAR II

WASHINGTON, D.C. -- An intensive review of government documents, including recently declassified ones, reveals that during World War II, the U.S. Government was aware that shipyard workers involved in the massive wartime ship-building program were being exposed to dangerous levels of asbestos dust from asbestos products deemed essential for defense. Nevertheless, these hazardous shipyard working conditions were not corrected by the Navy nor made known to asbestos manufacturers.

The facts were presented in a suit filed today by Johns-Manville Corporation, a wholly owned subsidiary of Manville Corporation, against the United States of America in which Johns-Manville claimed breach of express and implied-in-fact wartime contracts. The suit, filed in the United States Claims Court in Washington, D.C., claims damages as the result of Johns-Manville's manufacture and supply of strategic asbestos-containing insulating and fireproofing materials for the U.S. during World War II.

"Johns-Manville's decision to sue the federal government follows a year-long review of now declassified wartime documents. The documents demonstrate that the U.S. Government is responsible for injured shipyard workers and, thus, should share with the asbestos industry in the social and financial responsibility for properly compensating the injured wartime shipyard workers," according to Dennis H. Markusson, Manville Corporation's assistant corporate counsel.

The suit claims that the government breached its contract with Johns-Manville for the responsibility of the occupational health and safety of its wartime shipyard workers. Government hygiene studies of the working conditions in shipyards throughout the war indicate that the government chose not to require compliance with its own health and occupational standards.

According to Manville officials, the government specified asbestos during World War II because of its life saving qualities aboard ships, but the government also allowed excessive exposures to asbestos to endanger the lives of shipyard workers. As early as 1939, the U.S. Navy knew that it was not complying with known occupational standards. In March, 1941, a memo from the medical officer in charge of the U.S. Navy's Division of Preventative Medicine to Admiral McIntire, the Navy's

surgeon general and President Roosevelt's personal physician, states, " (i) Asbestosis. We are having considerable amount of work done in asbestos and from my observations, I am certain that we are not protecting the men as we should. This is a matter of official report from several of our Navy yards."

Another shipyard study in September, 1941, recommends, "The conditions in this shop present a very real asbestosis hazard and immediate steps should be taken to segregate the dusty processes into well ventilated areas." But the Navy apparently did not implement that recommendation. A follow-up study two years later in the same shop measured dust counts between six and 10 times higher than the known and accepted government standard for 'safe' exposure levels.

In seeking relief, Johns-Manville also claims the United States controlled the supply and use of strategic asbestos fiber during World War II. Johns-Manville contends the government purchased, sold, or supplied fiber, primarily African fiber, to manufacturers who, in compliance with wartime regulations and contracts were required to manufacture insulating and fireproofing materials used in government combat vessels.

John A. McKinney, chairman and president of Manville Corporation declared: "The practical effect of these wartime

regulations and contracts upon Johns-Manville was such that our entire business was essentially being operated for the direct benefit of the U.S. Government with criminal sanctions if we did not do so. Although almost half of the asbestos lawsuits against Manville are shipyard workers, the government has not shared any of the responsibility. Yet the government has accepted responsibility in other health related areas. It's time for the government to acknowledge and accept responsibility for these war related injuries."

#

NOTE: Enclosed with this news release is a fact sheet quoting relevant documents. Copies of the complaint and documents are available upon request.

FACT SHEET

Johns-Manville vs. United States of America

Johns-Manville's decision to sue the federal government followed a year-long review of declassified documents. The corporation's complaint, filed with the U.S. Claims Court, contends that the government must share responsibility for the asbestos crisis.

Johns-Manville is asking the court to award the corporation "monetary relief" from the U.S. Government "for damages arising from the breach of express and implied in fact contracts pertaining to the manufacture and supply of strategic asbestos-containing materials sold to the defendant during World War II."

In further outlining the government's responsibility for a major occupational disease crisis, the complaint asserts the following:

I. During WWII, the Government controlled all aspects of the shipbuilding industry. This fact is reflected in the following official references:

- A. "The Naval and Maritime Shipbuilding Programs", prepared by the Policy Analysis and Records Branch, Office of the Executive Secretary, War Production Board, July 18, 1944.
- B. "Ships for Victory - A History of Shipbuilding Under the U.S. Maritime Commission in World War II", by Frederic C. Lane, 1951.
- C. Memorandum to All Commandants of Naval Districts less Sixteenth Naval District and All Supervisors of Shipbuilding, USN from Bureau of Ships, Feb. 1, 1941.

II. Asbestos fiber was classified as critical and strategic and there was no satisfactory substitute.

- A. "Substitutes: There is no generally acceptable substitute for asbestos in specific applications where resistance to heat, electricity, acid erosion are prime considerations."

"Mineral wool, glass wool and the shorter fibers have been utilized for insulation in some instances in lieu of the critical grades. Asbestos is, however, being used in the war program as a substitute for other materials, e.g., asbestos pipe is being used in some applications in lieu of case iron and steel pipe. Short fiber in some instances is being used as a substitute for critical grades of long fiber."

"Since only African varieties of asbestos satisfy certain military requirements, the essential problem is that of maintaining uninterrupted imports from Rhodesia and Union of South Africa."

(Raw Materials Data Sheet prepared for Board of Economic Warfare by Department of Commerce, April 22, 1943)

-
- B. "The recommendation of the Defense Commission of October 18, 1940, for the purchase of strategic minerals summarized in the following table:

Asbestos20,000 short tons\$3,000,000"

(Memorandum to Mr. George M. Moffett from C. K. Leith, February 25, 1941)

-
- C. "Asbestos textiles are a non-substitutable component in all combat vessels.

...The largest single claimant is the U.S. Navy. ...In spite of the importance of asbestos textiles as a component, the industry is not a large one."

(Memorandum to WPB Regional Directors and Production Urgency Committees in Areas where Asbestos Textile Plants are Located from Fred Sinclair, Procurement Policy Divisions, June 30, 1944)

III. The Government controlled asbestos fiber during WWII in the following ways:

A. The Government purchased and imported asbestos fiber.

"Instead of leaving the purchase and importation of asbestos, which is largely a foreign product, to private concerns, the government has adopted the policy of buying and importing from England asbestos fiber mined in South Africa and needed by the USA, and selling it to the domestic processors as and when required by them." (Memorandum to Mr. Irving Swordlow, Acting Chief Public Welfare and Facilities Division, Feb. 18, 1943.)

B. The Government allocated the supply and restricted the use of asbestos fiber to the industry.

1. Restrictions: Conservation Order M-79, as amended June 18, 1942, restricts the use of fiber from South Africa to priority rated orders and confines certain grades and types to specific uses. Asbestos from the Union of South Africa and Rhodesia was placed under General Imports Order M-63, January 13, 1942. Conservation Order M-123, as amended December 14, 1942, prohibits the use or delivery of asbestos textiles for certain nonessential uses. Conservation Order M-283 provides for the allocation of asbestos textiles. (Raw Materials Data Sheet prepared by Dept. of Commerce, April 22, 1943.)

2. "S944.11 Use of material obtained under allocation or preference rating. Any person who obtains a delivery of any material under an order or specific direction of the Director of Priorities, or a delivery of Material bearing a preference rating, must use such Material or an equivalent amount thereof, for the purpose specified in connection with and issuance of the Order, direction or rating." (Title 32 - National Defense, Chapter IX--Office of Production Management, Subchapter B--Priorities Division, (Priorities Regulation No. 1) Part 944--Regulations applicable to the operation of the Priorities System. January 28, 1941.)

C. Manufacturers were subject to sanctions for violations of government restrictions.

1. "Violations. Any person who wilfully violates any provision of this Order, or who by any act or omission falsifies records to be kept or information to be furnished pursuant to this order, may be prohibited from receiving further deliveries of any material subject to allocation, and such further action may be taken as is deemed appropriate, including a recommendation for prosecution under Section 35 A of the Criminal Code (18 U.S.C. 80)." (Title 32 - National Defense, Chapter IX - Office of Production Management, Subchapter B - Priorities Div. - Part 1064 - Asbestos, Jan. 20, 1942.)

IV. The Government specified and required asbestos in wartime contracts.

A. See Memorandum to Assistant Chief in Charge of Planning and Statistics, Office of Procurement and Material, Navy Department from Stacy May, Director, Statistics Division dated Dec. 4, 1942, titled "Asbestos Requirements of Bureau of Ships and Bureau of Yards and Docks."

B. "The requirements for the higher type of asbestos textiles (used for lagging over pipe coverings and for Navy cable, etc.) have not been met in full, for the industry has not had the manpower and facilities to provide for them. The use of Canadian Grade 1 and 2 and 3F through 3T employed for these higher types, has been limited by the industry's capacity to consume, but by means of a combination asbestos and fibrous glass cloth, together with an expansion in productive capacity of the industry which is now in process, it should be possible to meet the most important requirements from now on. The tight supply situation on packing, gaskets, and oil seals due to insufficient manufacturing facilities continues." (Also see Consumption by End Use List on page 9.)
(Navy Dept., Office of Procurement and Material "Current Status of Critical Materials", Vol. No. 4, Oct. 1, 1944.)

C. "In conclusion the Bureau wishes to assure you that it does not prepare specifications in the interest of any manufacturing source. All changes in specifications are dictated by necessities of the Naval service and are made after careful consideration."
(Letter to Ehret Magnesia Manufacturing Co. dated Sept. 13, 1933, from the Department of the Navy.)

V. Government mandated compliance with asbestsos defense orders.

A. "S944.2 - Acceptance of defense orders.

Defense orders for any material, whether or not accompanied by a Preference rating certificate, must be accepted and fulfilled in preference to any other contracts or purchase orders for such Material."

(Title 32 - National Defense, Chapter IX, Office of Production Management, Subchapter B - Priorities Division (Priorities Regulation No. 1), Part 944 - Regulations Applicable to the Operation of the Priorities System).

B. ".02 Criminal or Civil prosecution under the Second War Powers Act shall be the customary method of enforcing compliance. All willful and substantial violations of War Production Board orders or regulations are to be referred to the Department of Justice for criminal or civil prosecution in lieu of taking administrative action against the violator, unless the General Counsel determines that such prosecution is impraticable or inappropriate."

(WPB Manual of Policy and Procedures - Compliance Activities of War Production Board, Aug. 20, 1943.)

C. "Every worker and every factory, every bit of material and every machine is now part of the war program. No use of material is unimportant and no company has a right to think of its own operations except in connection with the war program. Priorities must be accepted on this basis, and a strict observance, not only of the letter, but also of the spirit of the priorities system, is a high patriotic duty."

(WPB "Priorities and Industry", Aug., 1942)

VI. The Government was aware that WWII shipyard workers were being exposed to dangerous levels of asbestos dust.

A. "A medical survey...was conducted recently with the object of ascertaining whether asbestosis in any stage could be detected...X-rays of the chest were essentially negative in all cases. However, it was not considered that the negative findings precluded the future development of asbestosis by continued exposure to present occupational conditions."
(Annual Report of the Surgeon General, USN (Admiral R. McIntire), 1939)

B. "Points of great interest:....
(i) Asbestosis. We are having a considerable amount of work done in asbestos and from my observations I am certain that we are not protecting the men as we should. This is a matter of official report from several of our Navy Yards."

(Memorandum for Admiral McIntire from C.S. Stephenson, Commander, USN, in Charge, Div. of Preventive Medicine, March 11, 1941.)

C. "The conditions in this shop present a very real asbestosis hazard and immediate steps should be taken to segregate the most dusty processes into a well ventilated area. Local exhaust systems of proper design should be installed; however, if conditions cannot be completely controlled in this manner, then suitable dust respirators should be worn by the workers. Periodic physical examinations of the chests of all workers should be made."

(Excerpts from "Report of Industrial Health Survey of 9/24/42"; Report on Investigation of Asbestosis from Amosite Pipe Covering at Bath Iron Works, Dec. 19, 1944.)

D. "We saw in one very well run yard on the west coast men exposed to dangerous amounts of asbestos dust used in pipe coverings and on breechings."

(Talk before MC on October 20, 1942, by Philip Drinker, Consultant to the Maritime Commission, and Professor of Industrial Hygiene, Harvard School of Public Health.)

E. "Both yards had shops where asbestos coverings were made for the pipes in the ships. The work involved was the cutting and pounding of the asbestos matting into desired shapes. The process created a very real asbestos hazard, as the dust and fibers were found all over the shops on rafters, benches, and on workmen's clothing."

(Industrial Health Survey of South Portland Shipbuilding Corporation and Todd-Bath Ironworks, Sept. 18, 19, 22, 1942.)

F. "Hazard stated that Dr. Goldman of the Bethesda Labs (U.S.P.H.S.) found the Amosite to be mostly asbestos. Dust counts in the room where the men were working were very much higher than anyone would recommend - they ran up to 25 million. A figure of 5 million for asbestos is recommended."

(Letter to Bureau of Ships from Philip Drinker, Chief Health Consultant, U.S. Maritime Commission, Jan. 8, 1944.)

G. "1. The two older workers referred to above, the appearance of whose chest x-rays was consistent with the diagnosis of well established asbestosis. Those plates also showed signs of typical advanced age, such as cardiovascular changes, etc."

"2. A group of four workers whose exposure was from two and a half to four years whose chest x-ray appearances were consistent with a diagnosis of asbestosis."

"3. A group of six workers whose exposure was from two to two and a half years and whose chest films showed minimal changes but not sufficient for a definite diagnosis of asbestos."

"4. A group of 26 workers whose exposure was from two to two and a half years and whose chest films were considered negative."

(Report on Investigation of Asbestosis from Amosite Pipe Covering at Bath Iron Works, Dec. 19, 1944.)

H. ASBESTOS ... INSULATION

"1. Institute a regular clean-up of Asbestos Shop.

"2. Provide satisfactory dust collection hood over the saws.

"3. Make use of water spray to keep down the dust when cutting amosite on the tables.

"4. Arrange to have respirators sterilized, cleaned and repaired and provide clean place for their storage."

"Comment: There has been no satisfactory compliance with any of these recommendations."

(Industrial Health and Safety Re-Survey of Todd Pacific Shipyards, July 12-20, 1945.)

VI.(3)

I. During WWII, the Government controlled the distribution of information pertaining to shipyard occupational health and safety. Dissemination of shipyard Industrial Health Surveys was expressly prohibited by the Government under the Espionage Act, as follows:

"This document contains information affecting the national defense of the United States within the meaning of the Espionage Act. U.S.C. 50; 31 and 32. Its transmission or the revelation of its contents in any manner to an unauthorized person is prohibited by law."

JOHNS-MANVILLE CORPORATION and
JOHNS-MANVILLE SALES CORPORATION,
Plaintiffs,
v.
THE UNITED STATES OF AMERICA,
Defendant.

1. Johns-Manville claims damages against the United States for breach of express contracts and contracts implied-in-fact between Johns-Manville and the United States, acting through the United States Navy, the United States Maritime Commission and the War Shipping Administration. Johns-Manville was required by law during the national emergency occasioned by World War II (hereinafter "World War II") to agree and did in fact agree to supply strategic asbestos-containing insulating and fireproofing

materials to Government-owned shipyards and to privately owned shipyards operated for the use and benefit of the United States. During this time, the United States had and assumed responsibility for providing a safe place to work for workers in these shipyards. Johns-Manville did not have any control over the method of work or the safety of the workers. By virtue of its actions and pursuant to the contracts which Johns-Manville was required to enter into by statutes and regulations, the United States expressly and impliedly agreed to reimburse Johns-Manville for liabilities, including expenses, arising out of Johns-Manville's performance of these contracts. Shipyard workers and their representatives have brought claims against Johns-Manville for injuries allegedly incurred as a result of exposure to asbestos-containing materials supplied by Johns-Manville pursuant to these contracts. These shipyard workers were not employees of Johns-Manville, but were employees of Government shipyards or private shipyards operating under Government control and supervision during World War II. On September 9, 1982, and on other occasions, the United States repudiated the above agreements and refused to perform them. Johns-Manville's claim against the United States is also founded upon Acts of Congress, namely the Selective Training and Service Act of 1940, as amended, and the statutes referred to in Paragraph 8 below, and the regulations issued pursuant thereto, as well as the Fifth Amendment to the Constitution of the United States.

2. This Court has jurisdiction over these claims for relief pursuant to 28 U.S.C. §1491.

PLAINTIFFS

3. Plaintiff Johns-Manville Corporation is a corporation organized under the laws of the State of New York, with its principal place of business in Colorado.

4. Plaintiff Johns-Manville Sales Corporation is a corporation organized under the laws of the State of Delaware, with its principal place of business in Colorado, and is a wholly-owned subsidiary of Johns-Manville Corporation.

5. On August 26, 1982, plaintiffs and other related corporations filed petitions for reorganization pursuant to the Bankruptcy Code, 11 U.S.C. §1101 et seq., in the Southern District of New York.

NATURE OF THE CASE

6. Johns-Manville sues to recover damages because of the Government's breach of its express contracts and contracts implied-in-fact set forth in Paragraph 1 hereof.

7. During World War II, Johns-Manville was engaged in the manufacture of strategic asbestos-containing materials pursuant to contracts with the Government or with others, all of which contracts the Government required Johns-Manville to accept and perform (hereinafter "war supply contracts"). The materials manufactured by Johns-Manville pursuant to these contracts were

used by the Government and by Government contractors in the construction, conversion and repair of ships owned by the Government, operated on behalf of the Government, or owned or operated by the governments of countries entitled to give defense orders under Priorities Regulation No. 1 of the Office of Production Management, Priorities Division, 6 Fed. Reg. 4489 or any amendments thereto, (hereinafter called "allies") (all of which ships are hereinafter referred to as "Government ships"). These materials were manufactured by Johns-Manville from asbestos fiber expressly provided or allocated to Johns-Manville by the Government for such use and were manufactured in accordance with specifications established, promulgated or approved by the Government.

8. Statutes and other provisions relied upon and relevant to the claims asserted herein include U.S. Const. Amend V; First War Powers Act, ch. 593, 55 Stat. 838, approved Dec. 18, 1941; Second War Powers Act, ch. 199, 56 Stat. 176, approved March 27, 1942; Act of June 28, 1940, ch. 440, 54 Stat. 676, amended by Act of May 31, 1941, ch. 157, 55 Stat. 236; the Selective Training and Service Act of 1940, §9, ch. 720, 54 Stat. 885, approved Sept. 16, 1940; Act of May 2, 1941, ch. 84, 55 Stat. 148; Shipping Act, 1916, ch. 451, 39 Stat. 728, approved September 7, 1916; Merchant Marine Act, 1936, ch. 858, 49 Stat. 1985, approved June 29, 1936; Executive Order 8629, Jan. 7, 1941, 6 Fed. Reg. 191; Executive Order No. 8875, Aug. 28, 1941, 6 Fed. Reg. 4483; Priorities Reg. No. 1, Priorities Division, Office of Production Management, Aug. 27, 1941, 6 Fed. Reg.

4489; Executive Order No. 9054, Feb. 9, 1942, 7 Fed. Reg. 837; and Executive Order No. 9244, Sept. 16, 1942, 7 Fed. Reg. 7327. (Parallel United States Code citations to the above statutes have not been furnished either because the statutes have been repealed or so extensively amended since World War II that present United States Code citations, if available, would either be confusing or misleading. For the convenience of the Court, Appendix A to this complaint contains the statutes, executive orders and regulations set forth in this paragraph.)

THE WARTIME EMERGENCY DICTATED RAPID
CONSTRUCTION OF GOVERNMENT SHIPS

9. World War II began in Europe on September 1, 1939, when Germany invaded Poland. On September 8, 1939, the President of the United States proclaimed a state of national emergency.

10. In 1940 the United States Navy had less than 1,300,000 tons of major combat ships in service. This was thought to be adequate for a one-ocean Navy. With the isolation of the United Kingdom by the Nazi invasion of most of Europe, together with Japanese aggression in the Pacific, the possibility of simultaneous Navy action in two or more oceans became clear. As a result, in June 1940, Congress approved additions to the Navy of 2,172,000 tons of major combat ships, which would triple the size of the fleet. After Pearl Harbor and by September 1942, a five ocean Navy was planned to bring the total combat tonnage of the Navy to approximately eight million tons.

11. The outbreak of war in Europe also intensified the Government's need for merchant ships by drastically reducing the amount of foreign flag shipping available for the regular water-borne commerce of the United States. Moreover, from September, 1939 through November, 1941, the American merchant fleet was reduced, due to sales or transfer of merchant ships to Great Britain and Panama. Accordingly, in addition to the increase in combat ships, it became necessary to engage in unprecedented construction of ocean-going ships of merchant types. Approximately 5,777 merchant-type ships were constructed during World War II.

12. The war in Europe engulfed the United States after the attack on Pearl Harbor on December 7, 1941. The United States recognized the existence of a state of war with Japan on December 8, 1941. On December 11, 1941, Germany and Italy declared war on the United States, and the United States declared a state of war with Germany and Italy.

13. As war threatened the security of the country, the United States required rapid construction of a vastly enlarged naval and merchant fleet to conduct naval and military operations, to provide for the transportation of extraordinarily large quantities of materials needed to meet the requirements of the troops overseas, and to maintain services essential for the war effort. The ships and shipyards which the United States had at the beginning of the war proved to be barely adequate to allow the United States to defend itself during the early days of the war. The existing fleet was deficient in both size and type of

ship, and was largely outdated. The defense of the United States therefore required the rapid construction of a naval and merchant fleet. This construction program resulted in the deployment of the largest naval and merchant fleet in history. The Government's wartime need for ships accordingly dominated all aspects of ship repair and construction in the United States.

14. Because of the threat to the security of the country, the policy of the United States was to do everything possible to accomplish the construction and repair of combat and merchant ships as quickly as possible.

15. To satisfy the United States' need for ships, the Government effectively assumed control over the shipbuilding industry in the United States, and issued contracts, orders and directives binding on the shipbuilding industry and on its suppliers. Contracts, orders and directives issued by the Government required, by specification or otherwise, the use of substantial amounts of asbestos-containing materials in the construction and repair of Government ships. To ensure the availability of adequate supplies of asbestos for these purposes, the Government purchased, imported and stockpiled asbestos and strictly allocated the available asbestos supply among the manufacturers of asbestos-containing products essential to the shipbuilding program. The manufacturers of asbestos-containing products were compelled by the Government's exercise of its war powers to enter into contracts to supply these products for use in the Government's shipbuilding program.

With regard to industrial hygiene considerations raised by this extensive and mandatory use of asbestos, the United States recognized the need to enforce the United States Public Health Service recommended standard for safe exposure to asbestos in the workplace. In its World War II shipbuilding program, however, the Government failed to adhere to the standard, thus causing shipyard workers to be exposed to excessive concentrations of asbestos. Moreover, the Government kept knowledge of these excessive exposures confidential. These acts of the United States led to the occurrence of asbestos-related disease in workers who were employed in shipyards during World War II. These workers or their representatives have sued Johns-Manville and others to recover damages allegedly incurred as a result of asbestos-related disease, although those damages were in fact proximately caused by acts of the United States, and not Johns-Manville.

THE GOVERNMENT CONTROLLED THE SHIPBUILDING
INDUSTRY DURING WORLD WAR II

16. Through the use of the statutes and regulations referred to in paragraph 8, the United States controlled the operations of the shipbuilding industry throughout World War II.

17. Construction and repair of combat and merchant-type ships took place in shipyards owned and operated by the United States Navy (hereinafter "Navy yards" or "Government owned shipyards"). Additional ship construction and repair took place in private shipyards operated pursuant to Government contracts and direc-

tives and in shipyards owned by the United States but leased to private companies for operation pursuant to Government direction and control (hereinafter "contract shipyards" or "Government controlled shipyards").

18. During World War II, the United States mandated to both Navy and contract shipyards its requirements for all combat and merchant ships, including the number of ships to be constructed at each yard, methods of construction, and shipyard working conditions. The Government also controlled access to the shipyards and the disclosure of information concerning the work done in the yards, including information relating to working conditions in the yards.

19. Due to the Government's efforts to increase ship construction during World War II, the number of shipyard workers increased ninefold, from 168,000 in June, 1940 to a peak of 1,500,000.

THE GOVERNMENT REQUIRED ASBESTOS IN
MERCHANT AND NAVY SHIPS

20. It was imperative to the war effort and to the safety of the crews that both combat and merchant ships be constructed, converted and repaired to protect them against enemy action and other casualty to the greatest extent possible. In particular, this required protection against fire. Asbestos was essential in construction, conversion and repair of ships because its fireproofing and insulating efficiency increased the battleworthiness of ships and because its light weight resulted in

improved speed, fuel economy, operating range, and load capacity. At all relevant times, there was no known substitute for asbestos satisfactory for these purposes, and the Government required the use of large quantities of asbestos in the construction, conversion and repair of Government ships.

21. It was further imperative to the war effort that ships and their components be standard and of uniform quality to the greatest extent possible. Accordingly, the United States prepared, established and approved specifications (hereinafter "Government specifications") for materials used in ship construction, conversion and repair. Government specifications were expressly incorporated into and made a part of war supply contracts for construction, conversion or repair of Government ships, and the Government prohibited all deviation from its specifications without its express approval.

22. The war supply contracts required, by incorporation of Government specifications, the use of strategic and critical asbestos fiber in materials manufactured and supplied by Johns-Manville for the use and benefit of the United States in construction, conversion or repair of Government ships. Government specifications relating to asbestos-containing materials required the use of certain types and specified percentages of asbestos. Asbestos-containing materials intended for use in ships were designated by the Government as implements of war.

THE GOVERNMENT PURCHASED AND SUPPLIED
ASBESTOS TO INSURE ITS AVAILABILITY

23. The need for asbestos fiber was deemed so critical that the United States controlled its use and became a major asbestos importer and supplier for contractors such as Johns-Manville.

24. Certain types and grades of asbestos were of particular strategic importance in protecting ships and their crews. These types and grades of asbestos were not available in North America, but could only be obtained from Africa or the Soviet Union. Accordingly, prior to the entry of the United States into World War II, the Government outlined a plan for asbestos procurement and recommended that the Government purchase African asbestos for stockpile to insure the availability of adequate types and grades of strategic asbestos in times of national emergency.

25. Within approximately eighteen months from the commencement of World War II, the Combined Raw Materials Board, composed of representatives of the United States, the United Kingdom and Canada, entered into an Approving Memorandum of Understanding, whereby that Board assumed the responsibility for the distribution of asbestos among the three countries. The Government assumed responsibility for the allocation and distribution of the share of asbestos assigned to the United States. Strategic and critical asbestos required by Government contracts and specifications for use in asbestos-containing materials was either allocated or supplied by the Government.

26. The African asbestos required by the United States was thereafter purchased or obtained by the Government from various asbestos mining concerns, and was transported to the United States by Naval convoy. Additional asbestos was obtained from the Soviet Union in exchange for war materials. The available supply of strategic asbestos was decreased by enemy sinkings of ships carrying asbestos.

THE GOVERNMENT CONTROLLED THE USE OF ASBESTOS
BECAUSE OF ITS STRATEGIC AND CRITICAL NATURE

27. Government enforced priority controls over the use of asbestos were essential to the war effort. The President had the power to authorize any wartime department or agency to enter into contracts or to modify existing contracts, without regard to the provisions of law, whenever deemed necessary to facilitate the prosecution of the war. First War Powers Act, ch. 593, 55 Stat. 838, 839 (1941). The President had the authority to issue and enforce national controls over the manufacture, use, purchase and sale of strategic and critical emergency wartime material, to the extent deemed necessary to further the war effort. Second War Powers Act, ch. 199, 56 Stat. 176, 177-178 (1942).

28. Shortly after the United States became involved in World War II, the Government determined that the national defense need for asbestos and asbestos-containing material was critical. In fact, the Government viewed asbestos as having a top priority among strategic and critical minerals. Accordingly, one month

after the United States' recognition of a state of war, the Government issued the first of a series of orders which, for all practical purposes, restricted the use of asbestos to fulfillment of Government war supply contracts.

29. In order to ensure that the asbestos industry would be able to meet the continuing demands of the Government for the wartime supply of asbestos-containing materials, the Government requested members of the industry to establish liaisons with the Government to make sure that necessary manpower would be available to maintain peak production. Nevertheless, in October, 1944, the Navy reported the existence of a continuing wartime shortage of certain strategic asbestos-containing materials because of insufficient manpower in the asbestos industry.

JOHNS-MANVILLE FULFILLED THE
GOVERNMENT'S NEED FOR CRITICAL MATERIALS

30. After August 27, 1941, up to the termination of the state of emergency which arose out of World War II, Johns-Manville was required by statute and Government regulations to comply with any order of the United States or of any shipyard operating for or on behalf of the United States to manufacture and supply asbestos-containing materials of the kind, quantity and quality ordered by the United States or such shipyard.

31. The failure of Johns-Manville or the responsible head or heads thereof to comply with any such order would render them guilty of a felony and subject them to a conviction punishable

by imprisonment for not more than three years and a fine not exceeding \$50,000.

32. Johns-Manville did in fact receive orders for, and entered into war supply contracts for the manufacture of asbestos-containing insulating and fireproofing materials for or for the account of the United States or its allies or for shipyards working for or on behalf of the United States or its allies. Some of Johns-Manville's war supply contracts were entered into directly with the Government. Other war supply contracts were entered into by Johns-Manville as a subcontractor to contract shipyards, and the Government was either a party to these contracts or mandated Johns-Manville's acceptance of them and dictated all material contract terms. Johns-Manville performed the war supply contracts in preference to all other contracts and orders, and in conformity with all requirements and specifications contained or adopted therein. After diligent search, Johns-Manville has been unable to locate or otherwise obtain from the Government copies of the war supply contracts and cannot, therefore, identify these contracts with greater specificity. The terms of the war supply contracts entered into by Johns-Manville are clearly established from the routine practice of the Government at all relevant times with respect to these contracts.

33. Pursuant to the war supply contracts, the strategic asbestos-containing materials manufactured by Johns-Manville were delivered to or for the account of the Government for use in construction, conversion and repair of Government ships. The

actual application and utilization of the asbestos-containing products, as with other aspects of the operation of both Navy yards and contract shipyards, was under the control and supervision of the Government.

THE GOVERNMENT ESTABLISHED
STANDARDS FOR SAFE USE OF ASBESTOS

34. In 1938, the United States Public Health Service (hereinafter "USPHS") published Public Health Bulletin No. 241, authored principally by Waldemer C. Dreessen, former Assistant Surgeon of the Public Health Service (hereinafter the "Dreessen Report"). The Dreessen Report was a study of asbestosis in asbestos textile workers and was prepared at the direction of the Surgeon General of the United States. One of the objectives of the Dreessen Report was to estimate the concentration of asbestos which could be tolerated without injury to health.

35. The Dreessen Report contained the following summary of its medical findings:

Above five million particles per cubic foot, numerous cases of well-marked asbestosis were found. It would seem that if the dust concentration in asbestos factories could be kept below five million particles (the engineering section of this report has shown how this may be accomplished), new cases of asbestosis probably would not appear.

At all relevant times, the recommended standard for occupational exposure to asbestos remained at five million particles per cubic foot (hereinafter "USPHS/Dreessen standard").

THE GOVERNMENT ASSUMED THE RISK OF
EXCESSIVE EXPOSURE TO ASBESTOS IN SHIPYARDS

36. As part of the wartime control over the shipbuilding industry, the United States had and assumed complete responsibility for control of working conditions and work practices and the prevention of industrial diseases in the shipyards. In addition, the Government specifically assumed responsibility for the initiation of any corrective action deemed necessary in either Navy or contract shipyards. In a 1942 agreement between the Navy and the United States Maritime Commission, health and safety responsibilities for contract shipyards were assigned to the Maritime Commission, while the Navy retained health and safety responsibilities for Navy yards.

37. Both the Navy and the Maritime Commission recognized that asbestosis could be an occupational hazard in the shipbuilding industry if the USPHS/Dreessen standard was not followed.

38. The Navy prevented other Government agencies from learning of working conditions in the shipyards because of its concern that the presence of other agencies in the shipyards would create a labor disturbance. On February 25, 1941, Navy Capt. C.N. Fisher wrote an internal memorandum to the Assistant Secretary of the Navy pointing out that the United States Public Health Service proposed to conduct a hygienic investigation of Naval shore establishments and recommending that work of this nature continue to be performed by the Navy. He stated further:

This is one example among many others wherein other Government Departments are again expressing their desires to intervene in the

conduct of our Navy Yards. I am strongly of the opinion that our Navy Yards and other shore establishments should be allowed to carry on their urgent and important work with as little interruption and interference as possible from any other agencies and trust that you will agree with this policy, which is, I understand, satisfactory to Secretary [of the Navy] Knox.

39. In a March 11, 1941 internal and confidential memorandum to Rear Admiral McIntire, Surgeon General of the Navy and physician to the White House, the Navy Commander of Preventive Medicine indicated the Navy's desire, supported by President Roosevelt, to retain complete control over working conditions in the shipyards, in order to avoid labor problems:

I gave Mr. Bard [Assistant Secretary of the Navy] and the two officers present a complete story of the beginning of this controversy from the Federal Administrator's letter; that is, that the United States Public Health Service had four teams of traveling scientists alleged to be able to make surveys of all of the Navy Yards and make recommendations for the correction of such hazards as were discovered. I told Mr. Bard that this was not considered the best policy, due to the fact that we had medical officers in the Yards and that in practically all instances recommendations of sound character had been made by medical officers. We saw no need of inviting the United States Public Health Service on its own invitation to do this job.

Likewise, I told him that I had spoken to you and that you had indicated that President Roosevelt thought that this might not be the best policy, due to the fact that they might cause disturbance in the labor element.

40. In the same March 11, 1941 memorandum, the Navy Commander of Preventive Medicine admitted that the Navy was not taking

appropriate steps to prevent excessive exposure to asbestos in Government shipyards:

Asbestosis. We are having a considerable amount of work done in asbestos and from my observations I am certain that we are not protecting the men as we should. This is a matter of official report from several of our Navy Yards.

The Government did not reveal this memorandum to Johns-Manville.

41. By July, 1942, Navy and Maritime Commission officials became aware of reports of an unfavorable accident situation in both Navy and contract shipyards. As a result of these reports, the Navy Department and Maritime Commission commenced a series of joint surveys in an effort to evaluate their accident and occupational disease prevention programs. These confidential surveys revealed shipyard working conditions far worse than the Navy and the Maritime Commission originally believed existed.

42. In one of these surveys, Dr. Philip Drinker, Chief Health Consultant to the Maritime Commission, described a "very real asbestosis hazard" in the shipyards. This survey was never published in the scientific literature, nor did the Government reveal the survey to Johns-Manville.

43. Another shipyard health survey, dated December 19, 1944, was conducted at Bath Iron Works, a Navy contract shipyard, by Lt. Commander W.E. Fleischer, United States Naval Reserve and Assistant Chief Health Consultant to the Maritime Commission, and Dr. Waldemer C. Dreessen, the author of the 1938 USPHS report. This confidential study, entitled "Investigation of Asbestosis From Amosite Pipe Covering at Bath Iron Works, Bath,

Maine" revealed numerous and substantial deviations from the USPHS/Dreessen standard. In some cases, there were exposures to concentrations of asbestos fiber in excess of ten times the recommended safe level of the USPHS/Dreessen standard. This survey was never published in the scientific literature, nor did the Government reveal the survey to Johns-Manville.

44. Throughout the war, the Government performed numerous additional confidential health and hygiene surveys in Government owned or controlled shipyards. Findings from these surveys indicated that shipyard workers were being exposed to excessive concentrations of asbestos according to the USPHS/Dreessen standard.

45. At all relevant times, the Government had exclusive control over operation of and access to the shipyards and had superior knowledge of potential health risks to shipyard workers who were being exposed to excessive concentrations of asbestos.

46. The Government controlled and limited the dissemination of information with respect to exposures to excessive concentrations of asbestos in the shipyards by classifying reports and documents containing such information, by prohibiting contract shipyards from disclosing information about the work done in the shipyards, and by failing to describe accurately the conditions in the shipyards in its public statements.

47. Scientific papers authored by Navy and Maritime Commission officials failed fully and accurately to report shipyard conditions. In September, 1945 an article, authored by Commander W.E. Fleischer, Assistant Chief Health Consultant,

Maritime Commission, and others, was received by permission of the Navy by The Journal of Industrial Hygiene and Toxicology for publication. (hereinafter "Fleischer-Drinker Report"). The Fleischer-Drinker Report was based on health and hygiene surveys which were conducted in two Navy shipyards and two Government contract shipyards. This Report represented that virtually all asbestos exposures were below the USPHS/Dreessen standard and concluded that the pipe covering work in shipyards was not "a dangerous occupation."

48. The results of all health and hygiene surveys performed during World War II at Government owned or controlled shipyards were classified during all relevant times, within the meaning of the Espionage Act, 50 U.S.C. §§31 and 32. Any transmission of their contents to an unauthorized person was prohibited by law. The wartime restrictions on distribution of many of the confidential health and safety studies have only recently been removed.

49. The United States failed to satisfy its statutory and contractual obligations with regard to the safe use of asbestos materials in shipyards.

DAMAGES

50. In recent years, claimants (hereinafter "World War II asbestos claimants") have brought lawsuits and other proceedings against Johns-Manville seeking damages for injuries or death which claimants allege resulted from their employment, or the

employment of their decedents, during World War II in Government owned or controlled shipyards. The World War II asbestos claimants have further alleged that they, or their decedents, contracted asbestos-related diseases as a result of exposure to asbestos-containing materials manufactured by Johns-Manville. In this suit, Johns-Manville seeks to recover for damages incurred in connection with lawsuits in which asbestos claimants' exposure to asbestos occurred in Government owned or controlled shipyards solely during and prior to World War II.

51. Although Johns-Manville has denied the allegations of all complaints seeking to impose such liability upon it, it has been held liable to some asbestos claimants. Johns-Manville has also paid reasonable settlements in appropriate cases, and has incurred substantial legal fees in the defense of suits brought by the World War II asbestos claimants. The amount spent to date in payment of judgments or reasonable settlements is approximately \$768,361.09, plus \$185,741.55 for reasonable legal fees in those cases in which judgments have been rendered or settlements concluded, all of which constitutes part of Johns-Manville's damages herein. Appendix B, attached hereto and incorporated by this reference, is a list of the cases, brought against Johns-Manville by or on behalf of the World War II asbestos claimants, which have been resolved by settlement or final disposition. The Appendix includes a statement of the amounts expended by Johns-Manville for settlements, judgments and costs of defense.

52. Johns-Manville believes that it may sustain further damages proximately caused by its manufacture and supply of asbestos-containing materials, as required by the war supply contracts, Government specifications, and other Government requirements and instructions by reason of additional judgments, settlements and defense costs associated with lawsuits now pending. Appendix C, attached hereto and incorporated by this reference, is a list of cases brought by World War II asbestos claimants which were pending against Johns-Manville as of the date of the filing of its Chapter 11 reorganization filing. A statement of costs of defense to date for each case, to the extent presently ascertainable, is included. Johns-Manville intends to supplement its pleadings periodically to assert any additional damages incurred in these pending cases.

53. Johns-Manville has also incurred additional unliquidated damages due to the burden this litigation has placed on it, including, but not limited to, increased insurance costs, increased business costs, loss of business reputation, and loss of business.

FIRST CLAIM FOR RELIEF

54. Plaintiff Johns-Manville repeats and realleges each and every allegation set forth in paragraphs 1 through 53 of this complaint.

55. The extraordinary circumstances existing immediately prior to and during World War II required the Government to take

unprecedented steps in the interests of national defense, including the control of the shipbuilding industry and war supply contractors.

56. Pursuant to applicable wartime law and the requirements of national defense, strict compliance by Johns-Manville with Government orders and directives and with the orders of shipyards operating for or on behalf of the United States and its allies was mandatory in view of Johns-Manville's status as a war supply contractor of strategic asbestos-containing materials. Failure on the part of Johns-Manville to comply with all such orders would subject it and its responsible heads to the penalties set forth in paragraph 31.

57. By reason of the foregoing, a contract was implied in fact between Johns-Manville and the Government that the Government would hold Johns-Manville harmless from any and all liability resulting from Johns-Manville's compliance with Government orders and directives and from Johns-Manville's supply of strategic asbestos-containing materials.

58. As a direct and proximate result of Johns-Manville's compliance with Government orders and directives and Johns-Manville's supply of strategic asbestos-containing materials pursuant thereto, Johns-Manville has incurred costs and expenses in connection with the suits and proceedings brought by the World War II asbestos claimants.

59. By reason of its agreement to indemnify and hold Johns-Manville harmless, the Government is liable to Johns-Manville for all such damages sustained by it.

SECOND CLAIM FOR RELIEF

60. Plaintiff Johns-Manville repeats and realleges each and every allegation set forth in paragraphs 1 through 59 of this complaint.

61. Immediately prior to and during World War II, the United States exercised complete control and authority concerning specifications, approval and certification of the type and composition of strategic asbestos-containing materials to be used in the construction and repair of ships in Government owned or controlled shipyards.

62. The Government promulgated, approved and established specifications for the manufacture, labelling, packaging, and shipping of strategic insulating and fireproofing materials intended for use in shipbuilding and ship repair. The Government specifications either expressly called for asbestos, or required the inclusion of asbestos in such materials by setting performance or other standards.

63. By the express provisions of the war supply contracts and other Government regulations, Johns-Manville was required to manufacture, label, package, and supply asbestos-containing materials in strict conformity with the requirements of the Government specifications.

64. The United States impliedly warranted that if the Government specifications were complied with, the products so produced would be free of all defects.

65. Johns-Manville complied in all material respects with Government plans and specifications concerning the manufacture of strategic asbestos-containing materials to be used in the construction and repair of ships in Government owned or controlled shipyards.

66. As a proximate result of the Government's strict requirements that Johns-Manville comply with the Government specifications, Johns-Manville manufactured asbestos-containing materials and delivered those materials to the Government and its contractors in compliance with those specifications. By virtue of such manufacture and delivery and the Government's breach of its warranty that compliance with Government specifications would result in the production of products that were free from defects, Johns-Manville has incurred costs and expenses in connection with the suits and proceedings brought by the World War II asbestos claimants.

67. By reason of the foregoing, the United States is liable to Johns-Manville for all such damages sustained by it.

THIRD CLAIM FOR RELIEF

68. Plaintiff Johns-Manville repeats and realleges each and every allegation set forth in paragraphs 1 through 67 of this complaint.

69. At all relevant times, the United States had and assumed the obligation of setting and enforcing health and safety

standards in Government owned or controlled shipyards, and initiating corrective action where necessary.

70. By its conduct the Government undertook a contractual duty to Johns-Manville and warranted that the United States was enforcing the recommended standard for exposure to asbestos in Government owned and controlled shipyards.

71. In entering into the war supply contracts, Johns-Manville was required to accept the Government's express and implied warranty and representation that the Government would fulfill its obligations concerning the enforcement of the recommended standard regarding exposure to asbestos in Government owned or controlled shipyards.

72. Nevertheless, the United States continuously failed to maintain and enforce its own recommended standard for prevention of workers' exposure to excessive concentrations of asbestos during the use and handling of strategic asbestos-containing materials.

73. The costs and expenses incurred by Johns-Manville in connection with the lawsuits brought by the World War II asbestos claimants are the proximate result of the Government's breach of its warranty concerning the safe use, handling and removal of asbestos-containing products in Government owned and controlled shipyards.

74. By reason of its breach of warranty, the Government is liable to Johns-Manville for all such damages sustained by it.

FOURTH CLAIM FOR RELIEF

75. Plaintiff Johns-Manville repeats and realleges each and every allegation set forth in paragraphs 1 through 74 of this complaint.

76. The United States established the terms and conditions of the mandatory war supply contracts entered into by Johns-Manville.

77. Pursuant to the terms of the war supply contracts entered into by Johns-Manville, Johns-Manville was not liable for damages to persons or property which were caused by acts or omissions of the Government.

78. The United States established the terms and conditions of its mandatory defense orders and war supply contracts under the wartime priorities programs. If the parties intended Johns-Manville to assume liability for Government acts or omissions relating to the performance of the war supply contracts, the Government had the obligation to make that intent clear.

79. Although the Government had and assumed the obligation of ensuring compliance with the recommended standard for prevention of shipyard workers' exposure to excessive concentrations of asbestos during the use and handling of asbestos-containing materials, the United States continuously failed to maintain and enforce this standard.

80. The costs and expenses incurred by Johns-Manville in connection with lawsuits brought by World War II asbestos claimants are the proximate result of the Government's failure

to enforce the recommended standard regarding exposure to asbestos in Government owned or controlled shipyards. Under the terms of the war supply contracts and pursuant to the intent of the parties, the Government has the obligation to hold Johns-Manville harmless for these costs and expenses.

81. By reason of the foregoing, the Government is liable to Johns-Manville for all such damages sustained by it.

FIFTH CLAIM FOR RELIEF

82. Plaintiff Johns-Manville repeats and realleges each and every allegation contained in paragraphs 1 through 81 of this complaint.

83. Prior to requiring Johns-Manville to perform each of the war supply contracts, the Government was aware, through its continuing health surveys, of the occupational health risk to shipyard workers from exposure to excessive concentrations of asbestos.

84. The United States did not correct the deviations from the recommended standard regarding exposure to asbestos, nor did it inform Johns-Manville, a wartime supply contractor, of the existence or the extent of these deviations. Knowledge of the risk of occupational disease in shipyard workers exposed to excessive concentrations of asbestos was a material fact which affected the cost of Johns-Manville's performance of the war supply contracts.

85. The Government had a duty to disclose to Johns-Manville its knowledge of the shipyard workers' exposure to excessive concentrations of asbestos during the use and handling of asbestos-containing materials manufactured by Johns-Manville pursuant to mandatory war supply contracts.

86. The Government breached its continuing duty by its failure to disclose the excessive concentrations of asbestos that shipyard workers were being exposed to in the course of their employment. Johns-Manville was required to enter into numerous war supply contracts relating to asbestos-containing materials without knowledge of this material fact.

87. As a proximate result of the Government's breach of its duty to disclose material facts, Johns-Manville has incurred costs and expenses in connection with the lawsuits brought by the World War II asbestos claimants.

88. By reason of the foregoing, the United States is liable to Johns-Manville for all such damages sustained by it.

SIXTH CLAIM FOR RELIEF

89. Plaintiff Johns-Manville repeats and realleges each and every allegation set forth in paragraphs 1 through 88 of this complaint.

90. Throughout World War II, African and other asbestos fiber was furnished, bailed, allocated or otherwise provided by the United States to Johns-Manville. All such asbestos fiber (hereinafter "Government supplied asbestos fiber") was provided to

Johns-Manville exclusively for use in the wartime manufacture of asbestos-containing materials intended for the construction and repair of Government ships.

91. The United States retained actual or constructive title to and control of the Government supplied asbestos fiber while it was in the possession of Johns-Manville throughout the manufacturing process, and even after the fiber was incorporated into the finished asbestos-containing materials.

92. By retaining actual or constructive title to the asbestos fiber, a bailment was created whereby the United States expressly or impliedly assumed all risks associated therewith and agreed to hold Johns-Manville harmless from any losses arising out of the use and handling of the Government supplied asbestos fiber.

93. Any injuries to shipyard workers resulting from exposure to asbestos-containing products manufactured by Johns-Manville was proximately caused by the Government supplied asbestos fiber which was incorporated in such products by Johns-Manville in accordance with the war supply contracts, Government specifications, and other Government requirements and instructions.

94. Johns-Manville has incurred costs and expenses in connection with lawsuits brought by World War II asbestos claimants who were allegedly injured as a result of exposure to the Government supplied asbestos fiber incorporated into asbestos products manufactured by Johns-Manville pursuant to Government specifications.

95. By reason of the foregoing, the United States is liable to Johns-Manville for all such damages sustained by it.

SEVENTH CLAIM FOR RELIEF

96. Plaintiff Johns-Manville repeats and realleges each and every allegation set forth in paragraphs 1 through 95 of this complaint.

97. During all relevant times the United States established wartime insurance procurement requirements as one part of its entire wartime shipbuilding program. In administering that program, the United States determined the allowable contract cost for insurance coverage for every contractor, subcontractor and supplier. This cost determination was based upon the Government's evaluation of all of the risks involved in the required contract performance.

98. In accordance with that insurance procurement program, Johns-Manville was restricted, limited, or prevented from obtaining additional reimbursable public and products liability insurance coverage.

99. The United States thereby expressly or impliedly agreed to assume all risks and hold harmless all participants in the shipbuilding industry, including Johns-Manville, from any liability arising out of performance of the mandatory war supply contracts which exceeded the reimbursable insurance premiums allowed by the Government.

100. Johns-Manville has incurred costs and expenses which have not been compensated by liability insurance as a result of lawsuits brought against Johns-Manville by shipyard workers who claimed that they were injured by exposure to asbestos-containing materials manufactured by Johns-Manville pursuant to the war supply contracts, and intended for use in the wartime shipbuilding program.

101. Johns-Manville believes that some of the damages suffered by it were covered by insurance, and it has filed suits against its insurers to recover these damages. Johns-Manville's insurers have disclaimed liability. The United States is liable for Johns-Manville's costs and expenses which are uninsured or which exceed the amount of Manville's insurance coverage arising out of Johns-Manville's performance of the war supply contracts.

102. By reason of its assumption of such risks and its agreement to hold Johns-Manville harmless from such liability, the Government is liable to Johns-Manville for all such damages sustained by it.

EIGHTH CLAIM FOR RELIEF

103. Plaintiff Johns Manville repeats and realleges each and every allegation set forth in paragraphs 1 through 102 of the Complaint.

104. During all relevant times, Johns-Manville was required by the war supply contracts to supply asbestos-containing materials in the amounts and in the forms and under the conditions

required by the contracts and to do so in preference to all other contracts entered into by Johns-Manville.

105. As a result of the war supply contracts, Johns-Manville's primary business was substantially converted, throughout the relevant time period, into that of supplier to the Government of war-related asbestos-containing materials.

106. By virtue of Johns-Manville's compliance with the war supply contracts as required by law, Johns-Manville has incurred costs and expenses in connection with the suits and proceedings brought by the World War II asbestos claimants.

107. For the foregoing reasons, Johns-Manville is entitled to fair and just compensation, pursuant to the Selective Training and Service Act of 1940, as amended, for complying with the war supply contracts of the United States or of shipyards operating for or on behalf of the United States, including all such damages sustained by Manville.

NINTH CLAIM FOR RELIEF

108. Plaintiff Johns-Manville repeats and realleges each and every allegation set forth in paragraphs 1 through 107 of this complaint.

109. The Government's mandatory requirement for compliance with the war supply contracts constitutes a taking of Johns-Manville's property, and Johns-Manville is entitled under the Fifth Amendment of the Constitution of the United States to just compensation therefor.

TENTH CLAIM FOR RELIEF

110. Plaintiff Johns-Manville repeats and realleges each and every allegation set forth in paragraphs 1 through 109 of this complaint.

111. The incidence of asbestos-related disease among workers at Government owned or controlled shipyards was not foreseeable by Johns-Manville at the time of its entry into the war supply contracts or during its performance of those contracts.

112. The risk of such injuries to shipyard workers was not assumed by Johns-Manville, but was intended to be borne by the Government, which completely controlled all aspects of the supply, production, and use of asbestos fiber and strategic asbestos-containing materials.

113. Johns-Manville complied in all material respects with the war supply contracts and with the Government specifications for the production and supply of strategic asbestos-containing materials for use in the construction and repair of combat and merchant ships for or for the account of the Government during the national emergency.

114. Despite Johns-Manville's compliance with the war supply contracts and the Government specifications, and even though it was intended that the Government, and not Johns-Manville, would be responsible for injuries arising out of the use of Government supplied asbestos fiber and asbestos-containing materials manufactured pursuant to Government specifications and the war supply contracts, Johns-Manville has nevertheless incurred

substantial damages as a result of suits brought against it by the World War II asbestos claimants.

115. By reason of the foregoing, Johns-Manville should not be required to bear the unforeseeable or unexpected costs which it has incurred, and is entitled to reformation or equitable adjustment of the war supply contracts to compensate it for the judgments and settlements it has paid and the costs and expenses it has incurred as a result of the lawsuits brought by the World War II asbestos claimants.

RELIEF

WHEREFORE, plaintiffs Johns-Manville Corporation and Johns-Manville Sales Corporation demand judgment against defendant United States of America as follows:

1. Damages in the amount of \$768,361.09, for settlements and judgments paid to the World War II asbestos claimants;
2. Damages in the amount of \$185,741.55, for attorneys' fees, costs and expenses paid in the defense of lawsuits brought by the World War II asbestos claimants;
3. Damages for increased insurance and business costs, and for loss of business and business reputation;
4. Equitable adjustment or reformation of the contracts between Johns-Manville and the United States;

5. Attorneys' fees and expenses incurred in the instant case;

6. Costs of this action;

7. Such other and further relief as this Court may deem just and proper.

DATED: Washington, D.C.
July 14, 1983

Respectfully submitted,

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